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厦门大学

## 硕士学位论文

# 美国数人侵权中的连带责任制度

Rule of Joint and Several Liability among Multiple Tortfeasors  
in America

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## 内容摘要

提及连带责任一词，很多人都会觉得很熟悉，作为侵权领域数人侵权一项重要的责任承担方式，通常与共同侵权密不可分。美国数人侵权中的连带责任制度发展有其独特性之处，但对这一制度在美国侵权领域的发展运用我国学者却鲜有系统性研究。

数人侵权中的连带责任规则自 19 世纪 40 年代引入美国后，至 20 世纪 70 年代发展鼎盛。但从 20 世纪 80 年代开始，由于侵权法理念的发展变化，“深口袋”被告现象的频现，保险危机的爆发，在这些内外因素的影响下美国掀起了一场侵权法改革运动，引发了关于连带责任制度存废问题的大讨论。这场论战的结果，便是截至 2013 年，有 43 个州都接受了连带责任改革。这些州要么彻底废除了连带责任制度，要么在原有的基础上进行了修正以限制连带责任的适用范围。

与美国连带责任制度发展趋势不同的是，我国的连带责任适用范围在不断扩张。尽管两国在侵权法的理论基础和司法实践方面存在一定差异，但同为连带责任，其内在本质是共通的。该制度在美国法上的适用，对于重新构建我国的连带责任制度具有重大的借鉴意义。在实体方面，将受害人利益、加害人利益、社会利益置于平衡的三角关系中以限制连带责任的适用；在某被告丧失赔偿能力时，建立对于不具备赔偿能力人的责任份额的再分配规则；解决数人侵权与受害人过错发生竞合情形，在受害人过错超过 50%或多数侵权人的过错总和以及加害人过错超过受害人的时候，处理好侵权人与受害人的责任承担；明确被告的责任范围，对于非因故意或重大过失的行为人宜确定某个责任范围，在该责任上限内承担赔偿责任。在程序方面，细化诉讼程序保障原告享有自主选择被告的权利的同时也对其权利的行使进行必要的限制。

**关键词：**数人侵权；连带责任；再分配规则

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## ABSTRACT

Referring to the joint and several liability, many people feel very familiar, as an important way of liability apportionment among multiple tortfeasors, usually related to joint tort. The joint and several rule among multiple tortfeasors has its characteristic in America, while our scholars have little research on it.

The rule of joint and several liability was introduced to America in 1840s, until it became a system which played a leading position in the area of tort in America in 1970s. While in 1980s, because the development of tort law idea, "deep pocket defendant" circumstance occurred frequently owed to the appliance of the rule of joint and several liability, and the outbreak of insurance crisis, a tort law reform movement occurred which led to a great debate about the abolishment or existence of the rule of joint and several liability. By the impact of this movement, the result of this debate is that joint and several liability reform has been adopted in about 43 states of the United States. These states which adopted reform either abolish thoroughly or do some changes on the basis of original rule to restrict the appliance of joint and several liability.

Unlike the America, the appliance of joint and several liability in China still show a trend of expansion. Though there are many differences about the theory and judicial practice of the tort law between China and America, as the same rule, its inherent nature is common. There is much for reference of the appliance of joint and several liability among multiple tortfeasors in America to re-establish the rule in China. In the aspect of entity, restrict the appliance of joint and several liability to balance the benefit of victim, tortfeasors and society; establish the rule of reallocation for the liability share of people who has not the ability to provide compensation; solve the problem in which multiple tortfeasors and victim both have fault, in the situation of victim's fault is more than 50% or most of the fault of the tortfeasors and the fault of tortfeasors is more than victim's, deal with the responsibility between tortfeasors and victim; clear the scope of the defendants' responsibility who is not intended or

gross negligence. In the aspect of procedure, refine the proceedings, guarantee the plaintiff shall have the right to choose the defendants as well as to make necessary restrictions for the exercise of their right.

**Keywords:** Multiple Tortfeasors; Joint and Several liability; Reallocation

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